

REMARKS

The Office examined claims 1-13, and all claims are rejected. With this response, no claims are amended, added or canceled. Applicant respectfully requests reconsideration and withdrawal of the rejections to the claims in view of the following discussion.

Claim Rejections Under § 103

On page 2 of the Office Action, claims 1-13 are rejected under 35 U.S.C. § 103(a) as unpatentable over Riddle (U.S. Patent No. 6,175,856) in view of Applicant's Admitted Prior Art (AAPA). Applicant respectfully submits that claim 1 is not disclosed or suggested by Riddle in view of the AAPA, because there is no motivation to combine the teachings of the reference with those of the AAPA, and even if there were combined one of skill in the art would not arrive at the limitations recited in claim 1.

On page 3 of the Office Action, the Office acknowledges that Riddle does not teach that the adaptation mechanisms or capabilities are regarding a data delivery process, and relies on the AAPA from applicant's own specification. The section of applicant's specification relied upon by the Office recites:

In a multimedia streaming service, there are three participants involved: a streaming server, a streaming client and an underlying network which provides the connectivity between the server and the client. The server provides the functionality to deliver the multimedia streaming content to the client. For that purpose, the client and server communicate with each other over the network regarding the methods of capability exchange, content delivery method negotiation, content delivery control, and so forth. Such information exchange can be carried out via well-defined network protocols.

For a multimedia streaming session to be set up and started successfully, the server and the client need to support a minimal set of protocols, which are selected as standard protocols by the service. An example of such a service can be found in 3GPP TS 26.234 V5.1.0, "Transparent End-to-End Packet Switched Streaming Service (PSS); Protocols and Codecs (Release 5)", June 2002, hereafter referred to as TS 26.234). Furthermore, in order for a service to be successful from the data delivery and playback performance point of view, the *data delivery control* mechanisms in the service must also be well-defined. Such mechanisms are used to *adapt* the data delivery process in order to cause the changes of behavior in the underlying network characteristics. (emphasis in original).

However, the motivation to combine the cited portion of applicant's specification with Riddle is derived from applicant's own disclosure. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's own disclosure. See MPEP § 2143; see also *In re Vaeck*, 20 USPQ2d 1438, 1442

(Fed. Cir. 1991). Applicant respectfully submits that the Office has based the combination of teachings on applicant's own disclosure, because the present invention specifically identifies the need for "a capability identification mechanism to identify the supported adaptation mechanisms or capabilities and an adaptation capability signaling and negotiation mechanism for the server and client to agree on the usage of a particular set of adaptation mechanisms or capabilities defined within the service context." *See* specification page 2, lines 24-27. The combination of adaptation mechanisms or capabilities regarding data delivery process with the negotiation between the server and client to agree on the usage of a particular set of adaptation mechanisms or capabilities is the invention recited in claim 1.

Without applicant's disclosure there is no motivation to implement the system discussed in Riddle for a data delivery process without applicant's disclosure specifically pointing out this deficiency in the prior art (see specification page 2, lines 28-30), and suggesting a solution. Applicant acknowledges that information identified in applicant's specification as "prior art" may be treated as prior art. *See* MPEP § 2129. However, when applicant has merely identified a problem, and proposes a solution to the problem, it is impermissible hindsight reasoning to use applicant's own disclosure to provide the motivation to combine the references to arrive at the claimed limitation. Therefore, for at least this reason claim 1 is not disclosed or suggested by Riddle in view of the AAPA.

Furthermore, even if Riddle is combined with the AAPA as suggested by the Office, all the limitations recited in claim 1 would not be disclosed or suggested by the combination. The AAPA only states that the data delivery control mechanisms in the service must be well-defined, and that such mechanisms are used to adapt the data delivery process in order to cause the changes of behavior in the underlying network characteristics. *See* specification page 32-35. However, the AAPA mentions nothing about signaling and negotiation of mechanisms used to adapt the data delivery process as discussed in claim 1. Therefore, for at least this additional reason, Riddle and the AAPA, alone or in combination, fail to disclose or suggest all of the limitations recited in claim 1.

For at least the reasons discussed above in relation to claim 1, independent claims 5, 8 and 11 are also not disclosed or suggested by Riddle in view of the AAPA.

As for claims 2-4, 6, 7, 9, 10, 12 and 13, they are dependent from claims 1, 5, 8 and 11 and recite features not recited in claims 1, 5, 8 and 11. Therefore, these dependent claims are patentable at least in view of their dependencies.

Conclusion

Applicant respectfully submits that the present application is in condition for allowance, and such action is earnestly solicited. Applicant hereby authorizes the Commissioner to charge Deposit Account No. 23-0442 for any fee deficiency required to submit this response.

Respectfully submitted,

Date: 27 April 2007

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